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Unfair Competition by Nonprofit Organizations With Small Business:
An Issue for the 1980s

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UNFAIR COMPETITION BY NONPROFIT ORGANIZATIONS WITH SMALL BUSINESS: AN ISSUE FOR THE 1980s

June 1984
(Third Edition)

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Foreword to the Third Edition

The Office of Advocacy is pleased to publish a revised edition of our report, Unfair Competition By Nonprofit Organizations With Small Business: An Issue for the 1980s. The report was first published in November 1983, following a symposium on the issue, and a slightly revised edition was printed shortly thereafter. The current version of the report contains a number of technical changes, as well as some new substantive material developed since the report was first published. The new material is located primarily in the policy, case studies, and tax sections of the report.

The tremendous public response to the report (over 6,000 copies in circulation to date) is ample evidence that the report raises important public policy questions that must be resolved in a way that is acceptable to both the small business and nonprofit communities. The Office of Advocacy hopes to continue to play a leadership role in seeking solutions to the problems raised by nonprofit organizations engaged in commercial activities in competition with small firms.

The original and current editions of the report were prepared by Jeffrey S. Giancola of my staff.

Frank S. Swain
Chief Counsel for Advocacy

June 1984

Foreword

The Office of Advocacy is charged by statute with responsibility for assessing and evaluating the impact of Federal policies and activities on small businesses. Pursuant to that authority, and in response to numerous complaints by various segments of the small business community, the Office of Advocacy has initiated an inquiry into the growing problem of nonprofit organizations engaged in commercial activities in competition with for-profit small businesses.

This report is intended to provide an introduction to the issue for the uninitiated, and serve as a resource document for policymakers and others involved in the search for solutions to the so-called "unfair competition" problem.

This report is based in large part on the proceedings of the Office of Advocacy's Symposium on Nonprofits Competition with Small Business, which took place in Washington, D.C., on July 27, 1983. A list of those persons participating in the Symposium is located in the Appendix.

The information in this report was developed by the Office of Advocacy, except for the specific examples provided by Symposium participants in Section III.

We want to thank the Symposium participants and all others whose work and continuing interest in this important policy issue have made this report possible.

Frank S. Swain
Chief Counsel for Advocacy
U.S. Small Business Administration

November 1983

I. Introduction

Increasingly, tax-exempt nonprofit organizations are engaging in commercial activities in competition with for-profit small firms that pay Federal, state and local taxes for the privilege of doing business. The phenomenon has caused growing concern in recent years as cutbacks in Federal grants and heightened competition for private giving have led more nonprofits to look to for-profit activities as a source of dependable operating revenue.[1] Competition between nonprofits and for-profits is occurring in traditional service industries such as merchandise sales, health care and travel. It is also occurring in newer fields such as laboratory testing, audio-visual services, engineering consulting and data processing.[2]

The issue of competition by nonprofits with small business is part of the much larger problem of government competition with the private sector.[3] To the extent that the Federal government subsidizes nonprofit organization activity through the corporate income tax exemption in the Internal Revenue Code, nonprofit activity represents a form of indirect government competition

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[1] See, for example, Schmitt, "Survival of Nonprofits May Depend on Their Entrepreneurial Savvy," Washington Post, July 27, 1983.

[2] See Section III of this paper for a more detailed description of the types of nonprofits competition occurring in these industries today.

[3] See the U.S. Small Business Administration, Government Competition: A Threat to Small Business (1980). This was the report of the SBA Advocacy Task Group on Government Competition with Small Business.

with the private sector. This can be distinguished from direct government competition with the private sector, in which the government supplies to itself commercial goods and services which are available from the private sector.

Although the "unfair competition" issue has received some attention in the past,[4] it is now emerging as a major policy question for the 1980s. In order to better define the issue, we must move away from anecdotal complaints of unfair competition and establish a framework for analyzing the policy questions raised. To that end, Section II of this paper will discuss economic and policy aspects of the nonprofits competition issue. What are the rationales for granting nonprofits tax-exempt status and are they still valid? What is the level of commercial activity by nonprofits in various industries? What is the economic effect of the tax exemption and other factors on competition between nonprofit and for-profit firms? Section III of the paper will present documented case studies of competition between nonprofits and for-profits in seven industries. Section IV will analyze current Federal tax and procurement laws and regulations as they relate to the operation of commercial activities by nonprofit organizations. Section V will suggest possible remedies available within the Federal system to the problems revealed in the previous discussions.

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[4]See Hearings on Government Competition with Small Business, before the Subcommittee on Advocacy and the Future of Small Business of the Senate Committee on Small Business, 97th Congress, First Session (1981). See also the Hearing on Government Competition with Small Business, before the Subcommittee on Monetary and Fiscal Policy of the Joint Economic Committee, 97th Congress, First Session (1981).

II. Policy and Economic Aspects of Competition Between Nonprofit and For-Profit Enterprise

A. Policy Aspects

Nonprofit organizations have been exempt from the Federal corporate income tax for as long as that tax has existed. Yet the rationale for the exemption is unclear. This may have been an acceptable state of affairs when the nonprofit sector was chiefly composed of charity organizations such as the American Red Cross and the Salvation Army. But it is not adequate today when an increasing number of nonprofits are "operating" or "commercial" nonprofits - organizations such as nonprofit hospitals, day care centers, nursing homes, research institutes and publication houses that receive few donations and charge prices for the goods or services that they produce.

1. The "Public Goods" Rationale

The most common rationale offered for exempting nonprofits from taxation is that they provide services such as health care, education and basic research that for some reason would not be supplied in the absence of a tax subsidy by competitive for-profit firms.[5] This "public goods" rationale suggests

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[5]Statement of Professor Burton A. Weisbrod, Economics Department, University of Wisconsin at Madison, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. See also Weisbrod, The Voluntary Nonprofit Sector (Lexington Books, 1977).

that nonprofits should be granted tax exemption for providing services that would otherwise have to be provided by the government.

The "public goods" rationale may be valid in relation to nonprofit charities, such as the Salvation Army and CARE, that render aid to the poor and distressed. But it hardly seems to justify the tax exemption for many nonprofit hospitals, nursing homes and day care centers operating today. These organizations render little or no charitable services, and in fact seem to target their services at those who can pay. If nonprofit hospitals and vocational schools are granted tax-exempt status in order to encourage them to provide these services, why are for-profit hospitals and vocational schools, of which there are thousands, not granted a similar exemption? Furthermore, the fact that nonprofits are increasingly competing with for-profit firms in a wide range of activities is evidence that many nonprofits are not providing "public goods" which private competitive firms will not otherwise produce.

2. The "Quality Assurance" Rationale

The second major justification for exempting nonprofits from taxation is the so-called "quality assurance" or "fiduciary duty" rationale.[6] This theory

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[6]Statement of Professor Henry Hansmann, Yale Law School, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. See also Hansmann, "The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation," reprinted as "Why Are Nonprofit Organizations Exempted from Corporate Income Taxation," in Michelle White, ed., The Interaction of the Public, Private and Nonprofit Sectors (Washington, D.C.: Urban Institute, 1981).

posits that nonprofits provide services, such as health care and education, where consumers are ill-equipped to judge the quality of services offered before the purchase is made. Having these services performed by tax-exempt nonprofits assures the public of quality and protection in situations where for-profit firms might charge excessive prices for inferior service.

This rationale has superficial appeal in the case where a person is selecting, for example, an appropriate nursing home for an aging parent. But, in fact, there is no empirical evidence that nonprofits provide higher quality services than for-profits engaged in similar activities.

Furthermore, there are large numbers of commercial nonprofits today performing activities such as analytical testing, computer software production, research services and consulting services.[7] In these areas, the purchasers of the services are sophisticated and hardly need the "protection" of nonprofit providers in order to avoid unsuitable for-profit sellers. Also, granting nonprofits a subsidy through the tax exemption is at best an inefficient way to assure quality services. It would seem a much more effective - and fairer - course to impose tough disclosure requirements and other regulations on all providers of services in areas where we feel the public needs special protection (e.g., health care, vocational education). In fact, given the extent of Federal and state regulation of medical care, and the availability of private litigation to reach instances of malpractice, an adequate quality assurance system may already exist in the health care industry.

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[7]See Section III of this paper.

3. Conclusion

The traditional rationales for exempting nonprofits from Federal income taxation do not withstand close scrutiny, particularly as applied to the modern-day "commercial" nonprofits that offer goods and services in direct competition with for-profit firms. Much of the current confusion that surrounds application of the criteria for granting tax-exempt status to a nonprofit organization can be traced to the lack of a clear understanding of the rationale for the exemption. It is time for a critical reappraisal of the principles that supposedly justify the special tax treatment that nonprofits receive.

B. Economic Aspects

1. The Growth of the Nonprofit Sector

There has been an explosive growth in the number of nonprofit organizations in the United States in recent years. According to the Internal Revenue Service, there were over 780,000 active nonprofit entities as of June 30, 1983. Whereas in 1929, the nonprofit sector accounted for no more than 1.2 percent of gross national product, it had grown to 2.8 percent by 1974, and is currently at approximately 3.5 percent of national income.[8] Moreover, non-

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[8]Statement of Professor Henry Hansmann, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. The figures are based on data published in the National Income Accounts by the U.S. Department of Commerce.

profit activities are concentrated in a relatively few labor intensive services industries such as research, health care and education. Thus, the share of total direct United States employment accounted for by nonprofits is even larger than its contribution to GNP, amounting to 5.9 percent in 1973, and probably much more today.[9]

It is important to note that the above figures do not include the tremendous value of volunteer labor to nonprofits. It is estimated that as of the mid-1970s, the volunteer labor pool provided over 20 percent of nonprofit organization labor resources. This amount totalled <u>six billion</u> hours of effort, which is the equivalent of three million full time workers (or 4 percent of the entire labor force at that time).[10]

In 1982 the Urban Institute, a Washington-based nonprofit research organization, launched a major three-year project to examine the scope and operations of the nonprofit sector in the United States. Among the major project activities was a survey of over 8,000 nonprofit organizations in sixteen localities. Of the over 3,000 organizations responding to the survey, it was found that two-thirds were formed during the past two decades.[11] This statistic provides clear evidence of the growth of the nonprofit sector in recent times.

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[9]Henry Hansmann, <u>The Role of Nonprofit Enterprise</u>, 89 Yale Law Journal 835, 835-836 (1980).

[10]Figures supplied by Professor Burton Weisbrod, in his statement before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[11]Urban Institute, the Nonprofit Sector Project, <u>Progress Report No. 3</u> (September 1983), p. 3.

As important as the increasing size of the nonprofit sector is its changing character. Traditional "donative" nonprofits, such as the United Way, which rely primarily on gifts and contributions for their operating revenue, are being replaced by so-called "commercial" nonprofits.[12] These latter nonprofits derive all or nearly all of their income from sales of the goods or services they produce. Included in this group are many nonprofit vocational schools and primary and secondary schools, most nonprofit nursing homes and day care centers and educational testing services.

Table I demonstrates the extent to which "commercial" nonprofits have come to dominate the nonprofit sector. Nonprofits operating in the fields of health, scientific research, housing and education, and mutual organizations (such as mutual insurance companies), all rely on sales rather than donations and grants for the vast majority of their operating revenues. Nonprofit legal aid clinics, on the other hand, are still almost entirely dependent on gifts, grants and contributions.

The Urban Institute reports that the second largest source of income for nonprofits, after the Government, are dues, fees and charges, accounting for about 29 percent of total revenues of organizations responding to the survey. And almost 50 percent of these organizations stated that they expected increases in earned income during the following year.[13]

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[12]These useful labels were developed by Professor Hansmann of Yale Law School.

[13]Urban Institute. Progress Report No. 3, pp. 3-4.

TABLE I

Financing Sources of Nonprofits

(as % of total revenues)[14]

Area of Activity	Sales	Gifts, Contributions and Grants
Health Care Delivery	92	8
Scientific Research	86	14
Housing	61	39
Education	82	18
Mutual Organizations	99	1
Legal Aid	3	97

[14]Source: Professor Burton Weisbrod, in his statement before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

The increased reliance of nonprofits on earned income from commercial activities has spawned a whole new industry: seminars and books on business ventures for nonprofits. For example, the Grantsmanship Center, which describes itself as the country's "oldest and largest fundraising training institution," offers a three-day workshop on how nonprofits should select and start businesses. The brochure for the workshop explains the need as follows:

> "Most nonprofits are locked into traditional fundraising approaches. If fundraising and grantsmanship get you all you need--terrific. If not, it's time to look into the hottest area of nonprofit funding--launching a business enterprise. Your nonprofit agency can start a business--and generate dollars that aren't dependent on grants or contributions. And it can do this legally, and keep its tax-exempt status.
>
> Driven by financial necessity, more and more nonprofits are launching enterprises that can generate income to sustain their regular programs. These enterprises range from shoestring businesses to multi-million dollar deals. They include thrift stores and gift stores, restaurants, periodicals and mail-order services, housing and real estate syndication, cable television franchising, and much more."

Little, if any, consideration is given to the impact of these commercial activities on small businesses.[15]

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[15]See also Crimmins and Keil, Enterprise in the Nonprofit Sector (Washington, D.C.: Partners for Livable Places and the Rockefeller Brothers Fund, 1983).

2. Nonprofits and For-Profits in the Same Industry

Nonprofit firms, particularly the commercial nonprofits, are now competing head-on with for-profit firms in many areas of activity. Moreover, these nonprofits are coming to resemble their for-profit competitors in structure and operation.

Case studies of particular instances of competition between nonprofit and for-profit firms in the small industry are detailed in the following section of this report. While such anecdotal evidence of competition abounds, economists to date have devoted very little effort to quantifying the extent of such competition on an industry-by-industry basis. Some figures are available, however. For example, as of 1977, it was estimated that 13 percent of research and development laboratories were organized as nonprofits, accounting for 36 percent of industry revenue. And nine percent of analytical testing laboratories were nonprofit by both number of institutions and amount of industry revenue generated.[16] The latter statistic is significant because at one time almost all analytical testing services were performed by for-profit firms.

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[16]Data supplied by Professor Henry Hansmann, in his statement before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. The data is based on information contained in IRS Form 990 filed by nonprofit organizations.

Table 2 shows the significant extent to which for-profits and nonprofits compete in the health, education and research and development fields today. Similar statistics need to be compiled for other industries as well.

TABLE 2

Nonprofits and For-Profits in the Same Industry[17]

(as % of total industry)

Industry	For-Profit	Nonprofit	Other*
Nursing Homes[18]	68	20	11
Day Care Centers[19]	51	41	9
Post-Secondary Schools[20]	34	20	47
Research and Development[21]	68	16	16

*This category includes the governmental sector.

[17]Source: Professor Burton Weisbrod, in his statement before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[18]By number of beds.

[19]By number of children served.

[20]By amount of revenue generated.

[21]By amount of revenue generated.

Surprisingly, economists have done very little analysis of the economic impact of nonprofits activity on for-profit firms. One analyst has stated that in industries where the costs of exit are high for for-profit firms, the unanticipated entry of nonprofits into the industry can increase supply, causing prices to fall and decreasing return on investment for owners of the for-profits.[22] There is some evidence that this is occurring in the audio-visual, analytical testing and research services fields.[23]

Another possible effect of nonprofits entry into an industry is price cutting. A nonprofit exempt from Federal and state taxes can rationally attempt to increase its market share by reducing prices below those charged by its for-profit competitors. The nonprofit can do this as long as it maintains a return on its investment that is higher than the after-tax return which could have been obtained through an indirect passive investment in securities and the like. There is evidence that some nonprofits operating in research services and data processing industries are charging significantly lower than prevailing market rates for their services.[24]

Whether the result is oversupply or price cutting, entry by tax-favored nonprofit organizations into the commercial arena constitutes indirect government regulation of the business environment to the advantage of nonprofit firms.

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[22]Susan Rose-Ackerman, Unfair Competition and Corporate Income Taxation, 34 Stanford Law Review 1017, 1026-1030 (1982).

[23]See Sections III-A, III-B, and III-E of this paper.

[24]See Sections III-E and III-F of this paper.

3. Effect of Tax Exemption on Adoption of the Nonprofit Form

There is some evidence that the availability of the tax exemption serves as an inducement to adoption of the nonprofit form in some industries. Using private nursing homes, hospitals, primary and secondary schools and vocational schools as the study base, Professor Henry Hansmann found a higher percentage of nonprofits in these fields in states with higher state and local tax rates than in states with lower rates.[25] Thus, it was found that elimination of all state corporate sales and income taxes and local property taxes would reduce the percentage of private nursing homes that are nonprofit from 24 percent to 3 percent in the typical state.[26] Hansmann concluded that the "tax exemption, and particularly exemption from [state] corporate income taxes and sales taxes, has a substantial effect in encouraging the development of nonprofit rather than for-profit firms in industries such as those studied here."[27]

Although certainly not dispositive, the above evidence suggests that a strong motivation for an entity to be organized as a nonprofit is to avoid Federal, state and local taxes, and not necessarily to serve charitable or other public purposes.

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[25]Henry Hansmann, "The Effect of Tax Exemption and Other Factors on Competition Between Nonprofit and For-Profit Enterprise" (preliminary draft, December 1982). The Federal corporate income tax was not studied because of its uniform applicability throughout the states.

[26]Ibid., p. 38.

[27]Ibid., p. 44.

III. Case Studies of Nonprofits Competition with Small Business in Select Industries

The following examples were provided by symposium participants and are included as an indication of the general types of nonprofits competitive pressures faced by small firms.

A. Audio-Visual Services Industry

There is evidence that nonprofit organizations, particularly colleges and universities, are active in all phases of the commercial audio-visual industry. This includes the development, production and distribution of audio-visual materials and computer software for educational institutions and the private sector.

The Education Media Center of the University of Colorado at Boulder, Colorado offers for rent over 5,700 films produced by 600 schools, associations and corporations. The materials are available for rent to both schools and the general public (including private businesses) in direct competition with local for-profit firms engaged in the same business. The University of Colorado also rents its television facilities and equipment, and offers complete video production and post-production services, script writing and film and videotape distribution. These services are advertised in industry trade publications such as Audiovisual Marketplace and the Video Service Book. A sales catalogue is available.[28]

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[28]Susan J. Donovan, Unfair Competition: How Government Gives the Edge to Nonprofits in the Communications Business (National Audio-Visual Association, Fairfax, Virginia, 1983), p.15.

The Minnesota Education Computing Consortium (MECC) is a nonprofit organization created by the State of Minnesota in 1973 to purchase microcomputers for State and local colleges and schools in Minnesota. In addition to purchasing hardware, MECC has expanded its activities to include the development, production and sale of educational computer software on a nationwide basis. Out-of-state school districts that become MECC members receive substantial discounts on computer software purchases that for-profit producers of these materials cannot match. It is estimated that 90 percent of MECC's effort is now dedicated to software distribution, and that it controls approximately 20 percent of the marketplace for classroom computer software outside of Minnesota.[29]

B. Analytical Testing Industry

This industry encompasses primarily independent testing laboratories that perform a wide array of analytical testing services for both private industry and government agencies. The for-profit sector of the industry is dominated by small firms. Nonprofits competition originates from three sources: (1) colleges and universities; (2) so-called "captive" nonprofit research institutes such as Federally Funded Research and Development Centers (FFRDCs)

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[29]Statement of Mr. Bennett Schultz, Sales Executive, DCA Educational Products, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. The remaining 80 percent of the market is dominated by for-profit firms, no one of which has more than five percent of the market.

and Federal Contract Research Centers (FCRCs), which are essentially arms of a sponsoring Federal agency; and (3) independent nonprofit organizations, such as Underwriters Laboratories (UL), which devote a substantial portion of their resources to providing commercial services to industrial clients.

For example, the University of Utah Research Institute operates a division called UBTL that offers a full line of analytical testing relating to industrial hygiene. These services are offered to both the government and the private sector. UBTL's brochure, mailed to prospective clients, states that UBTL has performed over 110,000 analyses for the National Institute for Occupational Safety and Health (NIOSH), and has performed "extensive analytical work" for the Occupational Safety and Health Administration (OSHA). There are hundreds of private sector firms that offer this type of analytical service.[30]

Similarly, Pennsylvania State University's (PSU) agricultural extension service has the largest share of the market for performing elemental analyses on soils and forages. PSU's Department of Agronomy has extensive facilities for routine trace analyses and offers its services to the public and local governments.[31] A legitimate question can be raised as to whether the performance of such functions in competition with small firms is a proper or fair use of university equipment purchased with Federal and state funds for "research" and "educational" purposes.

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[30]Statement of Dr. Earl H. Hess, President, Lancaster Labs, Inc., before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[31]Ibid.

C. Consulting Industry

Private practice consulting engineers have experienced increasing levels of competition by nonprofits in the area of performing feasibility studies for government agencies and private firms. These include water quality studies, specialized engineering research, surveying and mapping and computerized design aids productions.

For example, many university groups organized for research compete regularly for government contracts under the Environmental Protection Agency's (EPA) program for generating data for water quality regulation.[32]

Southwest Research Institute (SRI) is a large, Texas-based independent nonprofit. In addition to its basic research activities, SRI currently provides all in-service inspection work for the Pilgrim Nuclear Power Plant in Plymouth, Massachusetts, for the Austin-Edison Company. There are a number of local for-profit firms capable of doing the work that are at a competitive disadvantage because of tax and other benefits that SRI enjoys. Recently, SRI was solicited over a number of for-profit consulting engineer firms to provide engineering services for the Pearl Harbor Naval Shipyard in Hawaii.[33]

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[32]Statement of Mr. William Birkhoffer, American Consulting Engineers Council, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[33]Ibid.

D. Travel Industry

1. Travel Agencies

The travel agency industry, which is composed almost entirely of small business firms, has experienced nonprofits competition in the form of on-campus travel centers operated by colleges and universities. These entities enjoy a competitive advantage when competing for the discretionary student and faculty travel market through lower costs made possible by reduced postal rates, tax exemptions and the use of volunteer labor. They also benefit from a convenient on-campus location.

The International Study and Travel Association (ISTA) is an on-campus travel center operating under the auspices of the University of Minnesota. The center is involved in the sale of airline tickets, the arranging and selling of tours, and travel counseling. A significant amount of the business of the travel center involves discretionary student and faculty travel that is unrelated to off-campus study or other educational purposes served by the university. Yet the center enjoys tax-exempt treatment of all its income and accumulated reserves, as well as subsidized rent and support facilities from the university.[34] A state court challenge of this arrangement by two local travel agencies failed.[35]

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[34]Statement of Ms. Hannah Gratz, Bristol Travel Service, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[35]Travel Company of Minnesota v. International Study and Travel Association (ISTA), File No. 448504 (District Court, 2nd District, Minn., August 4, 1983). The court rejected an "unfair competition" claim based on state law.

2. Tour Operators

Motorcoach tour operators face competition by nonprofit organizations supported in whole or part by public funds. Because the operations of nonprofits are subsidized through Federal and state tax exemptions and other benefits, they are frequently able to price tours lower than private competitors.

For example, Tri County Technical College in Pendleton, South Carolina, organizes and operates long-distance bus tours available to the general public. In addition to being tax-exempt, these activities are subsidized through Federal and state funds. Tours previously arranged and operated by private operators for the college and the public are now arranged by the county college.

Transport of New Jersey, a wholly-owned transportation system of the State of New Jersey, operates long-distance interstate motorcoach tours for the public as New Jersey Tours. The system receives mass transit funds from the Urban Mass Transportation Administration of the U.S. Department of Transportation.[36]

E. Research Services Industry

The research services industry consists of small firms engaged in "applied" research and analytical services for industrial clients. Colleges and universities and independent nonprofit organizations offer these services in competition with for-profit firms as a by-product of tax-exempt "basic" research and education functions.

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[36]Statement of Mr. David Granger, Counsel to the National Tour Association, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

For example, faculty members at some colleges and universities use sophisticated equipment owned by the university, and purchased in part with Federal funds, to provide commercial research and analytical services to the private sector. Frequently, university administrators are either unaware of the practice, or have failed to develop a policy on appropriate faculty use of university instrumentation. Needless to say, faculty entrepreneurs are able to underprice local firms because they do not have to factor equipment and other capital costs into their prices.[37]

Independent nonprofit organizations also provide competition for for-profit small research companies. The Franklin Institute is a Pennsylvania nonprofit corporation organized for "the perpetuation of the memory of Benjamin Franklin and the promotion and encouragement of science, technology and the mechanical and useful arts." Franklin Institute began providing highly specialized scanning-electron microscope services in competition with private firms in the Delaware Valley. A local for-profit firm contended in a lawsuit against Franklin Institute that such commercial activities were outside the scope of Franklin's nonprofit corporate charter. The court rejected the action, holding that Franklin Institute could engage in such activities and remain a Pennsylvania nonprofit corporation. No ruling was made as to whether these activities jeopardized Franklin's tax-exempt status under Federal law.[38]

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[37]Statement of Dr. Charles Garber, President, Structure Probe, Inc., West Chester, Pennsylvania, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[38]Structure Probe, Inc. v. Franklin Institute, 450 F. Supp. 1272, 1289-90 (E.D. Pa. 1978), affirmed without opinion, 595 F. 2d 1274 (1979). See Section IV-B of this paper for a more detailed discussion of Federal tax laws as they apply to nonprofits.

Ironically, Franklin Institute's commercial activities were spun off as a for-profit entity shortly after the lawsuit was concluded.[39]

F. Computer Services Industry

The computer services industry is composed of firms providing remote data processing, systems integration, software services and a variety of other services to private industry and the government sector.

The industry is recently experiencing growing competition from colleges, universities and nonprofit associations rendering similar services. Colleges and universities are using student volunteers to develop software, which is then sold at submarket rates to recoup a portion of development costs. Similarly, with respect to computer hardware purchased out of university funds, excess capacity is sold at low rates to defray purchase costs. In both cases, the services are offered at abnormally low rates because the price does not reflect subsidization from other funding sources (including direct and indirect Federal funding).[40]

The University of Michigan recently negotiated an arrangement with Apple Computer, Inc., of Cupertino, California, for the purchase of $2 million worth of Apple computers over three years for academic use as well as for resale to students and faculty.

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[39]Statement of Dr. Charles Garber, Symposium on Nonprofits Competition With Small Business, July 27, 1983.

[40]Statement of Mr. William F. Harris, Interex Associates, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983. The University of Minnesota actively solicits commercial business for its Cray Supercomputer since only 20 percent of capacity is required to satisfy university needs.

The computers, purchased at discount rates, are being offered to students and faculty for their own individual use at slightly over half the normal retail price for such items. Local computer retailers, all taxpaying small firms, have already reported as high as a 50 percent drop in sales of Apple computers. A number of dealers are expected to be eliminated in the Ann Arbor area as a result of the University of Michigan deal.[41]

G. Hearing Aid Industry

The hearing aid industry was once composed almost exclusively of proprietary firms involved in manufacturing and retailing hearing aids. Since the mid-1970s, there has been an increasing incursion by nonprofit hospitals and clinics into the retail end of the industry.

While there is some question as to whether the proceeds of hearing aid sales by a nonprofit clinic are taxable,[42] there is little doubt that such sales are profitable. For example, a hearing aid center affiliated with a Washington state hospital incurred an annual average loss of $15,000 during the early 1970s, when it offered pathology diagnostic services but not hearing aid sales. By 1979, after beginning to sell hearing aids, the center grossed in excess of $1 million annually, with profits of over $150,000. In that same period of time, the salaries of clinic staff correspondingly increased up to 17 percent annually.[43]

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[41] See "Retailers Say Apple Deal is Rotten," Detroit Free Press, March 20, 1984.

[42] See discussion in Section IV-B of this paper.

[43] Statement of Mr. James Lovell, National Hearing Aid Society, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

H. Other Industries

During the period following the symposium, the Office of Advocacy has been apprised of numerous other instances of competition by tax-exempt nonprofit organizations with small firms. The following is a small sampling of such cases taken from the Office of Advocacy's files. They are based on facts as presented by small firms in documented letters to the Office of Advocacy.

Some nonprofit animal humane societies are expanding their basic shelter operations to include sales and servicing of non-stray animals and full service veterinary clinics that compete with private pet shops and veterinary clinics. In one instance, in Utica, Michigan, the opening of a humane society clinic was associated with a 50 percent drop in business and personnel for one nearby private clinic, and the complete closing of another. Tax-exempt status coupled with the ability to receive tax-deductible contributions and gifts (such as a building to house the clinic) allow humane society clinics to offer lower rates for services than many taxpaying private practitioners.

In order to defer some of the high costs of renovating its laundry facilities, a nonprofit hospital in Perth Amboy, New Jersey, began marketing its laundry services to other hospitals in the area in direct competition with local private laundry services. The hospital is offering laundry services at one cent per pound less than the lowest commercial rate available in the area.

Three nonprofit hospitals, all located in the Philadelphia, Pennsylvania, area have established prosthesis manufacturing shops in direct competition with local artificial-limb manufacturers who previously supplied the bulk of the hospitals' requirements.

State governmental entities, which are also tax-exempt nonprofit organizations, are selling advertising signs to large food and oil companies alongside major highways in direct competition with small firms who sell or lease signage erected on secondary roads adjacent to the superhighway exit. The latter-type signs are becoming worthless as advertisers realize they can buy advertising space directly from the state located right next to the highway.

IV. Statutory and Regulatory Aspects of Competition Between Nonprofit Organizations and For-Profit Small Firms

> "Nonprofits are a whole can of worms that Congress has yet to look at in a broad way. I have been blowing the trumpet for years to get lawmakers to spell out clearly what should be tax-exempt and what should not be."
>
> Sheldon Cohen, Former Commissioner of the Internal Revenue Service[44]

A. In General

Nonprofit organizations benefit from exemption or special treatment under virtually every form of Federal legislation affecting them. The most important is exemption from Federal corporate income taxation under Section 501 of the Internal Revenue Code (I.R.C.). Other areas of special treatment or exemption include Social Security,[45] unemployment insurance,[46] the minimum wage,[47] securities regulations,[48] bankruptcy,[49] antitrust,[50] unfair competition,[51] copyright[52] and postal rates.[53]

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[44]Quoted in "Special Report: For Many There Are Big Profits in 'Nonprofits,'" U.S. News and World Report, November 6, 1978.

[45]42 U.S.C. §410(a)(8)(B)(1976).
[46]26 U.S.C. §3306(b)(5)(A), (c)(8)(1976).
[47]29 U.S.C. §203(r)(1976); 29 C.F.R. §779.214(1982).
[48]15 U.S.C. §77c(a)(4)(1982).
[49]11 U.S.C. §303(a)(1982).

[50]See Marjorie Webster Junior College v. Middle States Association of Colleges and Secondary Schools, 432 F.2d 650 (D.C. Cir. 1970), cert. denied, 400 U.S. 965(1970).

[51]15 U.S.C. §44, §45 (1982).
[52]17 U.S.C. §§110,111(a)(4), 112(b), 118(d)(3)(1976).
[53]39 U.S.C. §3626 (1976).

It is the responsibility of the Congress and the Executive Branch to make a systematic inquiry into whether these exemptions are still justified in light of the growth of the "commercial" nonprofit sector.

B. Federal Tax Laws

Section 501 of the I.R.C. grants tax exemption to 23 different categories of organizations. Principally these include specified types of nonprofit corporations, such as charitable, religious, scientific and educational institutions (Section 501(c)(3)), as well as civic leagues (Section 501(c)(4)), business leagues (Section 501(c)(6)), and social clubs (Section 501(c)(7)). The prominence of the 501(c)(3) category is evidenced by the fact that of the 780,000 current active tax-exempts, 306,000 (over 39 percent) are 501(c)(3) nonprofits.[54] This is also the category in which most "commercial" nonprofits operate.

It is important to note that the Internal Revenue Code does not prohibit nonprofits from engaging in commercial activities. In fact, with respect to 501(c)(3) nonprofits, the organizations can engage in almost unlimited business activities because it is the primary purpose of the organization, and not its activities, which determines tax-exempt status.[55] As long as the proceeds from

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[54]Figures as of June 30, 1983. Statement of Mr. Gerald Sack, Exempt Organizations Division, Internal Revenue Service, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[55]The criteria for exemption under Section 501(c)(3) is that the organizations be "organized and operated exclusively for religious, charitable, scientific ... or educational purposes ..." See Rev. Ruling 64-182, 1964-1 C. B. 186, and Section 502 of the I.R.C. ("primary purpose" of organization must be noncommercial).

the business activities are directed to tax-exempt purposes, the organization can freely operate commercial ventures and retain its tax-exempt status.

Rather than prohibit commercial activities by nonprofits, Congress has attempted to tax the income from such activities with the so-called "unrelated business income" (UBI) tax.[56] The tax was first imposed in 1950, and the legislative history indicates that it was aimed at "unfair competition" by nonprofits with for-profit firms.[57] Unfortunately, the law has failed to fulfill its intended purpose because it contains numerous legal ambiguities and overly broad exceptions.

The unrelated business income tax is imposed on the "gross income" of a nonprofit from an "unrelated trade or business" that is "regularly carried on" by the organization.[58] An "unrelated trade or business" is in turn defined as any trade or business the conduct of which is not "substantially related" to the exercise or performance by the exempt organization of the purposes or functions constituting the basis for its exemption.[59] Thus it is said that the business activity must itself "contribute importantly" to the accomplishment of the exempt purpose in order not to be taxed as UBI.[60]

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[56]Sections 511-514 of the I.R.C.

[57]"The problem at which the tax on unrelated business income is directed is primarily that of unfair competition." S. Rep. No. 2375, 81st. Cong., 2d. Sess. 28-29 (1950).

[58]Section 512 of the I.R.C.

[59]Section 513 of the I.R.C.

[60]I.R.S. Reg. §1.513-1(d)(2).

The determination of what constitutes a "substantially related" business activity of a nonprofit is predictably difficult to determine in many cases. For example, if graduate students supported by a university develop computer software as part of their dissertation research, is the sale of the software by the college sufficiently related to the university's educational function so as to be exempt from tax? If a nonprofit laboratory performs analytical testing for private clients to supplement its basic research in the same subject area, are the client payments tax-exempt? How about the sale of jewelry with animal motifs by a zoo?[61]

The courts have also experienced difficulty in applying the "substantially related" test to specific fact situations. In Hi-Plains Hospital v. United States,[62] a nonprofit hospital in a small Texas town operated an in-house pharmacy. Hospital sale of pharmaceuticals were made not only to hospital patients, but also to private patients of doctors on the hospital staff and to the general public. The issue was whether any or all of the revenues from the latter two types of nonhospital sales were taxable to the hospital as UBI. The court held that sales to private patients of the staff doctors were tax-exempt, but that sales to the general public were taxable. This distinction was justified on the grounds that the hospital needed doctors, and having a convenient pharmacy for the patients of the doctors made it easier to keep doctors on staff. This in turn helped the hospital perform its tax-exempt function of providing hospital care. The same could not be said of sales to the general public.

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[61] The first two cases are hypotheticals. In the third case, the IRS held the jewelry sales taxable (but sales of stuffed toys in the shape of animals were held exempt).

[62] 670 F.2d 528 (5th Cir. 1982).

To one judge on the court, such legal distinctions defied rationality. In his dissent, he noted that the purpose of the UBI tax was to prevent "unfair competition" with for-profit entities. Nonhospital patients, whether private patients of staff doctors or not, could easily fill their prescriptions at local pharmacies. Such sales had little to do with the hospital's primary mission of rendering care to hospital patients. The dissenting judge's frustration with the UBI laws was evident in his concluding statement:

> "By hair-splitting judge determined distinctions with regard to generically similar facts, profit-making activities conducted by charitable institutions separate from their tax-exempt purpose will be permitted to enjoy a competitive advantage over tax-paying businesses attempting to afford the same service, contrary to the Congressional intent made manifest by the legislative history and statutory provisions requiring taxation of such profit-making subsidiary operations."[63]

There are also important exemptions to the tax on unrelated business income. For example, income from all research <u>for any entity</u> (public or private) by a college, university or hospital is exempt.[64] Since the distinction between "applied" and "basic" research is vague at best, and many technical services can be classified as research, colleges and universities are able to perform essentially commercial tasks for private industry without paying taxes on the profits. A for-profit firm performing the identical tasks must pay taxes on income from the work.

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[63] 670 F.2d at 535.

[64] I.R.C. §512(b)(8).

There is also an exemption for business activities of nonprofits which are carried on "primarily for the convenience" of their members, students, patients, officers or employees.[65] The determination of what constitutes a "patient" is difficult in the case of a nonprofit walk-in health clinic. For example, many walk-in hearing clinics are actively involved in the retail sale of hearing aids. If a person comes to the clinic solely to purchase a hearing aid for an established hearing problem, is the customer automatically a "patient" for the purposes of the exemption? The IRS has yet to establish pertinent standards for the determination of "patient" status.

The result has been that the business activities of nonprofits are not thoroughly scrutinized. And predictably, very little money has been collected under the UBI provisions. Total FY 1982 collections were only $24,600,000.[66]

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[65]Section 513(a)(2) of the I.R.C.

[66]Nonprofits file reports of UBI on the Form 990-T. Of the 3,069 Form 990-T returns examined for FY 1982, changes were recommended in 78 percent of the cases. If changes increasing the amount owed are offset by changes downward, and the net difference collected, it would increase FY 1982 UBI collections by $15,005,000. Figures as of June 30, 1983. Statement of Mr. Gerald Sack, Exempt Organizations Division, Internal Revenue Service, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

C. Federal Procurement Laws

1. OMB Circular No. A-76 (Revised)

Nonprofits compete head-on with for-profit firms in securing government contracts, particularly in the areas of research and development, consulting services and analytical testing services. Federal and state tax exemptions, and organizational advantages stemming from affiliations with large entities such as colleges and universities, give nonprofits a distinct advantage in competing for government contracts.

A good example was the award of a contract for additional electric power at Elgin Air Force Base in Florida. Bids were submitted by Gulf Power Company of Florida, a private entity, and by Choctawatchee Electric Cooperative (Chelco), a nonprofit Rural Electrification Administration (REA) cooperative. When the contract was awarded to Chelco, Gulf Power protested to the General Accounting Office (GAO), pointing out that it would pay taxes on the project and Chelco would not. Also noted was the fact that Chelco was eligible for a subsidized two percent loan to construct additional facilities necessary to perform the contract. The GAO denied the protest, stating that it was not feasible to introduce into the bid evaluation process such "conjectural matters" as taxes and interest. To a for-profit operator, taxes and interest are hardly "conjectural matters."

Office of Management and Budget (OMB) Circular No. A-76 establishes a government-wide policy of reliance on the private sector to provide commercial goods and services needed by the Federal government.

The Circular and its supplement, where applicable, prescribe a detailed cost-comparison process to determine whether a particular requirement can be satisfied more economically through in-house government performance or by contracting out.

The lowest apparent bidder as a result of an advertised or negotiated solicitation competes against the government in-house organization in the cost comparison process. Prior to 1983, the Federal and state tax exemptions that nonprofits enjoy were not factored into the cost comparison process. Where a nonprofit organization was competing against a for-profit firm, this resulted in a distortion of the true cost of contracting out the activity because a portion of the for-profit's price would be returned to the government in the form of Federal taxes. This was not true for the nonprofit since it pays no Federal taxes.

Fortunately, this disparity has been remedied in Revised OMB Circular A-76, issued August 16, 1983.[67] For the first time, if the apparent low bidder is a nonprofit organization, an amount equal to the Federal, state and local income taxes that would be paid by the lowest tax-paying bidder or offeror are added to the nonprofit's contract price to determine the true lowest overall cost to the Government.[68] If the for-profit firm's price is less than the nonprofit's price after this computation occurs, the for-profit firm competes against the government in-house operation in the cost comparison process.

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[67] 48 Federal Register 37110.

[68] See OMB Circular A-76 (Revised), Part IV, Chapter 3, paragraph 3 of the Supplement.

If the Chelco-Gulf Power competition had been subject to the new A-76 procedure, perhaps the result would have been different.

2. National Science Foundation Principles on Use of NSF-Supported Research Instrumentation and Facilities

Another encouraging development in the government contracts arena is the National Science Foundation's (NSF) recent policy statement regarding university use of instruments and facilities acquired with NSF grant support for commercial purposes.[69]

The stated NSF policy is that "it is contrary to the NSF's intent for grantees to use NSF-supported research instrumentation or facilities to provide services for a fee in direct competition with private companies that provide equivalent services." Universities and faculty members are not expected to use excess capacity on NSF-supported equipment to service private users except where "equivalent" services are not available on a commercial basis. Thus, the equipment or services rendered must be "unique" to the NSF grantee. Funds generated by charges for commercial use of NSF-supported instrumentation should be used by the grantee to offset the cost of services, to support the maintenance or operation of the instruments, or for further research or education in the sciences or engineering education.

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[69]The proposed statement was published in the Federal Register for public comment on June 4, 1982 (47 Federal Register 2488-89). The final statement was adopted by the National Science Board on January 21, 1983, and implementing guidelines were published on April 12, 1983 (48 Federal Register 15754-56).

The NSF statement is an appropriate first step towards reducing the competitive advantage that universities and faculty members have when they offer services to the private sector in competition with commercial research and service laboratories. A similar policy should be adopted by all Federal agencies with significant budgets for contract research.

D. State Corporation Laws

Nonprofit corporations, like business corporations, are organized under state law pursuant to state nonprofit corporation laws. State nonprofit corporation law is very poorly developed and there are significant variations from one state to the next. The ALI/ABA Model Nonprofit Corporation Act, originally promulgated in 1954, is still the basic organic statute in this area. Unfortunately, it imposes no meaningful restrictions on the extent to which nonprofits can engage in certain types of commercial activities. In fact, the drafters skirted the whole issue by simply offering two alternative versions of the purposes clause.[70]

Many states are currently revising their nonprofit corporation laws. The trend appears to be to reject the unitary treatment of nonprofits in the ALI/ABA Model Act, and substitute instead a two or three-tiered regulatory structure depending on the type of nonprofit involved. The two-tiered struc-

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[70]See ALI/ABA Model Nonprofit Corporation Act, §4, alternative §4 (1964).

ture distinguishes between "nonprofits" and "not-for-profits," and imposes a higher fiduciary duty on the latter type nonprofits (e.g., charitable institutions).[71]

One commentator has suggested that those who seek to limit the types of activities that nonprofits can engage in should not look to nonprofit corporation charters. Corporate charters are by their nature general documents, with broadly worded "purposes" clauses. Rather, efforts should be made to insure that all state nonprofit corporation laws contain strong rules governing self-dealing," conflict of interest and full disclosure of activities.[72] This is one way to insure that nonprofits fulfill their public purposes, and maintain the openness demanded by their special category of "public trust."

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[71] These changes have occurred in California and New York. Statement of Professor Henry Hansmann, Yale Law School, before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

[72] Statement of Professor Henry Hansmann before the Symposium on Nonprofits Competition with Small Business, July 27, 1983.

V. Remedies Available Within the Federal System

There are a variety of statutory and regulatory remedies available to address the problem of unfair competition by nonprofit organizations with small firms. Since it is unlikely that a wholesale abolition of the Federal tax exemption for nonprofits will occur, reformers should concentrate on effecting incremental changes to Federal laws with a view towards discouraging nonprofits from engaging in for-profit business activities. Some proposed changes are as follows:

A. Changes In Federal Tax Law

1. Higher Tax on or Outright Prohibition of Unrelated Business Activities

A nonprofit's unrelated business income is currently taxed at ordinary corporate income tax rates. The Congress could increase the tax by taxing the first dollar of unrelated business income at the highest marginal corporate income tax rate (46 percent), instead of the lowest (16 percent). This would act as a disincentive to engaging in unrelated business activities, without actually prohibiting them.

A more significant change would be for the Congress to amend Section 511 of the I.R.C. to prohibit unrelated business activities outright. Trade or business activities related to a nonprofit's tax-exempt purpose would continue to be allowed.

2. Define More Clearly What Constitutes "Unrelated Trade or Business"

The "substantially related" test for determining what constitutes an "unrelated trade or business" of a nonprofit is ambiguous and difficult to apply to specific fact situations. And it does not adequately reach all the business activities it should. Instead of just focusing on the extent to which the business activities relate to the nonprofit's exempt purpose, as the IRS regulations do now, the IRS should also look at the extent to which the activities impact on commercial firms. This is proper since the unrelated business income tax was enacted to prevent "unfair competition."[73]

3. Make Unrelated Business Activities a Criterion for Tax Exemption

Under current law, Section 501(c)(3), nonprofits (churches, schools, research institutes, charities) can engage in almost unlimited business activities without jeopardizing their tax-exempt status as long as they continue to fulfill their tax-exempt "primary purpose" (e.g., educational, scientific or religious). The IRS should promulgate a regulation that states that if a 501(c)(3) nonprofit engages in a specified amount of business activities (as a percent of total operating revenues), it will be presumed to be operating for other than tax-exempt purposes. The presumption could be rebutted by evidence presented by the nonprofit.

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[73]See footnote 53.

4. Eliminate or Restrict Exemptions from Tax on Unrelated Business Income

The Congress should eliminate the exemption from the definition of "unrelated trade or business" those activities operated "primarily for the convenience of its members, students, patients, officers, or employees ..."[74] These activities should be sufficiently related to the purpose or function of the nonprofit so that a special exemption is not needed to allow them to be conducted without taxation.

The Congress or the IRS should restrict application of the exemption from unrelated business income of all income derived from research for any person by a college, university or hospital.[75] The term "research" should be defined to include "basic" or "pure" research. "Applied" research involving the rendition of technical services should be specifically excluded from the scope of the exemption.

5. Review of IRS Regulations and Forms

The IRS should establish an advisory committee composed of representatives of the nonprofit and for-profit sectors to review current IRS regulations and tax forms affecting the nonprofit sector. Among other areas, the committee could review current Forms 990 (basic tax return form for

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[74]Section 513(a)(2) of the I.R.C.

[75]Section 512(b)(8) of the I.R.C.

nonprofits) and 990-T (unrelated business taxable income of nonprofits) to determine whether they accurately reflect total receipts from commercial activity sources. If they do not, the committee could suggest ways of improving the forms. The committee could also look into some of the more widely used exceptions from the UBI tax (see previous subsection) to determine whether they are being applied in ways that are beyond the original intent of the provisions.

6. Amend the Federal Trade Commission Act to Cover Commercial Activities by Nonprofits

Under the Federal Trade Commission Act, 15 U.S.C. §§41 et seq., the Federal Trade Commission (FTC) is authorized to prevent "persons, partnerships and corporations" from employing unfair methods of competition or engaging in unfair or deceptive acts or practices.[76] The term "corporation," however, is narrowly defined to include only for-profit entities, or trade associations representing for-profit entities.[77] Thus, with some very narrow exceptions carved out by case law, nonprofits can engage in commercial activities free from FTC scrutiny, while competing for-profit firms are liable for prosecution for engaging in unfair or anticompetitive trade practices in conducting the same activities.

The Federal Trade Commission Act should be amended to cover, at a minimum, the commercial activities of nonprofit organizations.

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[76] 15 U.S.C. §45 (1982).

[77] 15 U.S.C. §44 (1982).

B. Changes in Federal Procurement Law

1. Tax Factors Should be Used in All Solicitations

Tax factors are now employed in the cost comparison process under OMB Circular A-76 to compare the prices of nonprofits and for-profits. Federal procuring agencies should be required by statute or regulation to include these tax factors as bid evaluation or cost factors in all solicitations issued by the Federal Government. This is necessary because not all agency contract solicitations are subject to the A-76 cost comparison process.

2. Federal Agencies Should Regulate Commercial Use of Agency-Supported Equipment

The principles of the NSF policy statement on grantee use of NSF-funded equipment for commercial purposes should be adopted on a government-wide basis by the Office of Management and Budget (OMB) through appropriate amendments to OMB Circulars A-102 (grants to state and local governments) and A-110 (grants to universities, hospitals and other nonprofits).

VI. Conclusion

The increasing phenomenon of nonprofit organizations engaged in commercial activities in competition with for-profit small businesses cannot be ignored. The traditional justifications for granting nonprofits tax-exempt status have been stretched beyond recognition by this development. Policymakers in the Congress and in the Executive Branch must undertake a thorough evaluation of the changing role of the nonprofit in our society and economy. Appropriate revisions in Federal statutes and regulations governing nonprofits are necessary to reflect the existence of the commercial nonprofit sector, and to remedy the unfair competition now imposed on for-profit small businesses.

Appendix

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